

REMARKS

This is a full and timely response to the outstanding non-final Office Action February 22, 2007. The Examiner has required the Applicant to elect to prosecute one of three groups of claims identified in the Office Action. In response to the restriction requirement, Applicant elects to prosecute the claims of "Species II" corresponding to claims 1, 5, 13, 14, 23, 24, 28, 30, 31, 33, 36, 37, 38, 40, 42, 44, and 47, with traverse.

In the Office Action, the Examiner states that the present restriction requirement was issued in response to Applicant's comment regarding the Examiner's obligation to give patentable weight to explicit terms found in the claims. In particular, the Examiner states that "[I]n view of such a remark, following restriction requirement is necessary under 35 U.S.C. 121."


As a first matter, Applicant notes that the Examiner's decision to issue the Election Requirement appears to be motivated more by spite than by legal necessity. Instead of providing detailed analysis of the type described in Chapter 800 of the MPEP, the Examiner instead simply stated that he is applying the restriction requirement in response to arguments made by Applicant. Therefore, it appears as though the Examiner has decided to punish Applicant by issuing the restriction requirement. Applicant objects to such behavior as a clear abuse of discretion.

Irrespective of the above, Applicant notes that MPEP § 803 explicitly states that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine each on the merits even if the claims are directed to distinct or independent inventions. In this case, the Examiner has *already searched and*

examined each of the alleged "species." Accordingly, it clearly would not be overly burdensome on the Examiner to continue to examine each of Applicant's claims.

For at least the foregoing reasons, Applicant traverses the restriction requirement and requests the Examiner to examine all of Applicant's claims as he did in the first Office Action. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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